

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

GREENBRIER HOTEL CORPORATION, a  
West Virginia corporation; and THE  
GREENBRIER SPORTING CLUB, INC., a  
West Virginia corporation,

Plaintiffs,

v.

LEXINGTON INSURANCE COMPANY, a  
Massachusetts Corporation; XL INSURANCE  
AMERICA, INC., a Delaware corporation; ACE  
AMERICAN INSURANCE COMPANY, a  
Pennsylvania corporation; THE  
UNDERWRITERS AT LLOYD’S LONDON, a  
foreign corporation; MCLARENS YOUNG  
INTERNATIONAL, INC., a Delaware  
corporation, and ROCCO M. BIANCHI,

Defendants.

Civil Action No. 5:14-cv-15201

Hon. Irene Berger

**DEFENDANTS’ CROSS-MOTION FOR PARTIAL SUMMARY  
JUDGMENT AS TO BREACH OF CONTRACT AND HAYSEEDS DAMAGES**

Defendants, Lexington Insurance Company, XL Insurance America, Inc., ACE American Insurance Company, Underwriters at Lloyd’s London, McLarens Young International, Inc., and Rocco Bianchi, by counsel, cross-move pursuant to Rule 56 for partial summary judgment dismissing Count I of the Amended Complaint, including Hayseeds damages. In support of their cross-motion, Defendants state as follows:

1. The insurance policies issued by Lexington Insurance Company, XL Insurance America, Inc., ACE American Insurance Company, and Underwriters at Lloyd’s London (collectively, the “Insurers”) contain appraisal provisions.

2. In response to Defendants' motion to stay this case and proceed with appraisal, the Court ordered an appraisal to proceed.

3. The appraisal proceeded, with Plaintiffs seeking in excess of \$17 million. On March 9, 2017 an appraisal decision was issued awarding Plaintiffs \$57,000.

4. The Insurers promptly paid the \$57,000.

5. The Insurers, by proceeding with the appraisal and promptly paying the \$57,000 awarded, complied with their obligations under their respective policies.

6. In Count I of their Amended Complaint, Plaintiffs assert the Defendants breached the policies of insurance, by failing to timely pay to Plaintiffs the amount due under the policies.

7. Because the Insurers have timely paid all amounts due in accord with the terms of their policies, they are entitled to summary judgment dismissing Count I of the Amended Complaint.

8. McLarens Young International, Inc. and Rocco Bianchi are further entitled to partial summary judgment as to Count I of the Amended Complaint because they are not parties to the insurance policies.

9. Because Plaintiffs did not "substantially prevail" in the appraisal, they are not entitled to Hayseeds damages.

10. In support of their cross-motion, Defendants rely upon and attach the Affidavit of James M. Dennis with supporting exhibits as Exhibit 1 and the Affidavit of Rocco Bianchi with supporting exhibits as Exhibit 2.

11. Defendants also rely on the accompanying Defendants' Memorandum Of Law In Opposition To Plaintiffs' Motion To Vacate The Appraisal Award And In Support of

Defendants' Cross-Motion For Partial Summary Judgment As To Breach Of Contract And Hayseeds Damages ("Defendants' Memorandum of Law").

WHEREFORE, for the reasons set forth above and in Defendants' Memorandum of Law, Defendants respectfully request that this Court grant them partial summary judgment as to Count I of the Amended Complaint, including any claim for Hayseeds damages, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

Lexington Insurance Company,  
XL Insurance America, Inc.,  
ACE American Insurance Company,  
Underwriters at Lloyd's London,  
McLarens Young International, Inc.,  
Rocco Bianchi

/s/ Lee Murray Hall  
Lee Murray Hall, Esquire (WVSB # 6447)  
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**CERTIFICATE OF SERVICE**

I, Lee Murray Hall, counsel for Defendants, certify that a true and correct copy of the foregoing ***“Defendants’ Cross-Motion for Partial Summary Judgment as to Breach of Contract and Hayseeds Damages”*** was electronically filed with the Clerk of the Court on this the 13th day of June, 2017 using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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